

**NOTICE OF MEETING
MANAGEMENT AND GENERAL EMPLOYEES PENSION
BOARD OF TRUSTEES**

September 26, 2007

2:30 P.M.

***** AGENDA *****

**Location: Council Chambers
6591 Orange Drive**

Members of the Town Council may be present

- 1. ROLL CALL**
- 2. OLD BUSINESS**
 - 3.1 DEFINITION OF COMPENSATION – DONALD DIPETRILLO**
- 3. PUBLIC COMMENTS**
- 4. ADJOURNMENT**

ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THIS BOARD OR COMMITTEE WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETINGS OR HEARINGS WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSES, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk at 797-1023 at least five business days prior to the meeting to request such accommodation. If you are hearing or speech impaired, please contact the Florida Relay Service by using the following numbers: 1-800-955-8770 (voice) or 1-800-955-8771 (TDD)

ATTENDANCE
TOWN OF DAVIE BOARD OF TRUSTEES MEETING
Wednesday, September 26, 2007
TOWN HALL

2:30 p.m.

Trustees	Present	Not Present
Chairman Grace Hall	<input type="checkbox"/>	<input type="checkbox"/>
Vice Chair, William Ackerman	<input type="checkbox"/>	<input type="checkbox"/>
Secretary, John Phillips	<input type="checkbox"/>	<input type="checkbox"/>
Trustee, Russell Muniz	<input type="checkbox"/>	<input type="checkbox"/>
Trustee, Manny Diez	<input type="checkbox"/>	<input type="checkbox"/>
<u>Administrator, Florida League of Cities, Inc.</u>		
Paul Shamoun, Retirement Services Manager, Financial Services	<input type="checkbox"/>	<input type="checkbox"/>
<u>Others</u>		
Robert Klausner, Klausner & Kaufman, P.A.	<input type="checkbox"/>	<input type="checkbox"/>
Stewart Kaufman, Klausner & Kaufman, P.A.	<input type="checkbox"/>	<input type="checkbox"/>
Adam Levinson, Klausner & Kaufman, P.A.	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>



Klausner & Kaufman

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

Writer's e-mail: stu@robertdklausner.com

September 24, 2007

Sent via e-mail:

grace_hall@davie-fl.gov
ptshamoun@flcities.com

Grace Hall, Chairperson
Town of Davie Management and General
Employees Pension Fund
c/o Paul Shamoun, Administrator
301 S. Bronough
Post Office Box 1757
Tallahassee, Florida

Re: Pensionable Compensation/Severance - Donald DiPetrillo
Our File No. 06-0008

Dear Chairperson Hall:

The Board of Trustees has requested a legal opinion regarding whether severance payments to Donald DiPetrillo constitute "salary" under the terms of the Pension Plan and is therefore includable as pensionable compensation for purposes of determining Mr. DiPetrillo's pension benefit. For the reasons which follow, this question is answered in the affirmative.

Donald DiPetrillo was terminated from his employment as Fire Chief of the Town of Davie in August, 2007. DiPetrillo had an employment agreement with the Town which was entered into upon commencement of his employment in February, 2001. The agreement provides that upon termination of employment, DiPetrillo is entitled to severance payment. Specifically, Article 2.1 of the employment agreement provides as follows:

"In the event of the unilateral termination of the employee by the Town, the Town agrees to pay six months of said employee's salary

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applicable at the time of his/her termination as severance pay. For the purpose of this agreement salary shall mean only the base salary which will include any previous annual step increases or cost-of-living increases, and will include the amount of any unpaid longevity pay and such prorated amounts of payments due employee under Section 16 of this agreement, earned prior to the termination of employment. There will be no lump sum severance payment. Payment of severance pay will be made in the following manner: a payment equivalent to bi-weekly payments will be made within one week of the date of termination, followed by bi-weekly payments made throughout the remainder of the six month severance pay period following the date of termination of employment ...”

The employment agreement also contained a provision in Article 10 that provides that:

“The employee shall be enrolled in the same pension plan and shall enjoy all of the same benefits of said pension plan as those provided by the Town to other managerial employees, except that the employee will 100% vest in all pension contributions on the date of the first anniversary of his/her employment with the Town.”

If other members of the Fund had been paid severance that was included as pensionable compensation, the Fund would be required under the terms of the employment agreement to treat DiPetrillo in the same manner as the other employees. It is my understanding that this is a case of first impression and no other members of the Plan have been paid a severance. Therefore, the question is solely what meets the definition of salary under the terms of the Pension Fund.

Salary is defined as “total cash remuneration paid to an employee for services rendered.” Had the definition solely been “total cash remuneration,” there would be no question that severance would be includable as salary. However, due to the language “for services rendered” that is contained in the definition, the question to be answered is whether severance has been paid for services rendered. DiPetrillo has argued that the first sentence of Article 2.1 of the employment agreement clearly states that severance is salary and therefore pensionable compensation. I do not read the sentence in that manner. The first sentence of Article 2.1 states:

“In the event of the unilateral termination of the employee by the Town, the Town agrees to pay six months of said employee’s salary applicable at the time of his/her termination as severance pay.”

I interpret the language to mean that the Town is using DiPetrillo’s prior salary to determine the amount of the severance pay. It does not state that severance pay is salary.

September 24, 2007

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I have researched Florida case law and have found cases which discuss the meaning of "wages." These cases are clearly instructive on the issue of whether severance is salary. In Elder v. Islam, 869 So.2d 600 (5th DCA 2004), the Court defined wages as follows:

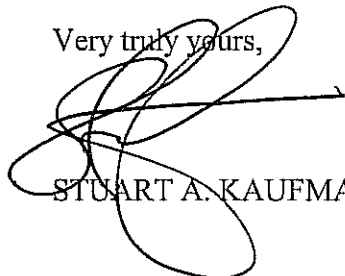
"Wages means and includes all compensation paid by an employer or his agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash. All remuneration for employment, including commissions and bonuses and the cash value of all remuneration paid in any medium other than cash. The compensation given to a person for his or her services. Compensation of employee is based on time worked or output of production. Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him. Terms should be broadly defined and includes not only periodic monetary earnings but all compensation for services rendered without regard to manner in which such compensation is computed. Central to these definitions and the results reached in the above cases is that the term "wages" involves some compensation paid to an employee for services rendered to his employer. Broadly read, this definition embraces salaries, commissions, bonuses, vacation pay, and severance pay."

See also, Coleman v. City of Hialeah, 525 So.2d 435 (3rd DCA 1988).

The courts in Florida have interpreted severance pay as wages paid for services rendered to an employee. Applying the court-accepted definitions to the instance at hand, DiPetrillo's severance payments constitute salary as the severance is being paid for services rendered to the Town of Davie. For this reason, it is my opinion that DiPetrillo's severance is pensionable compensation.

I hope that this opinion adequately addresses the question posed. I will discuss this opinion further with the Trustees at the special meeting set for September 26, 2007, at 2:00 p.m.

Very truly yours,



STUART A. KAUFMAN

SAK:ldm

FIRE CHIEF EMPLOYMENT AGREEMENT

Between

THE TOWN OF DAVIE and DONALD DiPETRILLO

Article 1. The appointment of Donald DiPetrillo, (hereafter referred to as "the employee,") as Fire Chief of the Town of Davie, Florida, (hereafter referred to as "the Town,") and the term of this Contract shall commence on March 5, 2001. Said appointment and the term thereof shall continue in full force and effect, and any amendment thereto must be mutually agreed upon in writing, signed by both parties, or until the retirement of the employee. This appointment and the provisions of this agreement shall have no definite fixed term and only may be terminated as set forth in Article 2.

Article 2. Termination of Agreement

Article 2.1 In the event of the unilateral termination of the employee by the Town, the Town agrees to pay six months of said employee's salary applicable at the time of his/her termination as severance pay. For the purpose of this agreement salary shall mean only the base salary which will include any previous annual step increases or cost of living increases, and will include the amount of any unpaid longevity pay and such prorated amount of payments due employee under section 16 of this agreement, earned prior to the termination of employment. There will be no lump sum severance payment. Payment of severance pay will be made in the following manner: A payment equivalent to two biweekly payments will be made within one week of the date of termination, followed by biweekly payments made throughout the remainder of the six month severance pay period following the date of termination of employment. The Town may terminate the employment of said employee without any requirement for severance pay only upon, employee's conviction for a felony, conviction of misdemeanor involving perjury or moral turpitude, or loss of his/her Florida Fire Fighters Certification. The Town also agrees to pay any and all unused, accrued vacation and sick pay up to applicable maximum accruals, and all other benefits to which employee shall be entitled within thirty days of termination.

Article 2.2 If this contract is terminated upon mutual agreement of the parties, the employee shall be entitled to payment of compensation equal to four months of said employee's salary applicable at the time of mutually agreed upon termination as severance pay. For the purpose of this agreement salary shall mean only the base salary which will include any previous annual step increases or cost of living increases, and will include the amount of any unpaid longevity pay and such prorated amount of payments due employee under section 16 of this agreement, earned prior to the termination of employment. There will be no lump sum severance payment. Payment of severance pay will be made in the following manner: A payment equivalent to two biweekly payments will be made within one week of the date of termination, followed by biweekly payments made throughout the remainder of the four month severance pay period following the date of termination of employment. The Town also agrees to pay any and all unused, accrued vacation and sick pay up to applicable maximum accruals, and all other benefits to which employee shall be entitled within thirty days of termination.

Article 2.2.1 In the event this contract is terminated due to the employee's resignation, the employee shall be entitled to his/her base salary and all other benefits through the date of resignation, payable on the date such salary and benefits are normally paid, with payment of all unused, accrued vacation and sick pay, up to applicable maximum accruals, to be made within thirty days from the date of such resignation. For the purpose of this agreement salary shall mean only the base salary which will include any previous annual step increases or cost of living increases, and will include the amount of any unpaid longevity pay and such prorated amount of payments due employee under section 16 of this agreement, earned prior to the termination of employment.

Article 2.2.2 In the event of the death of the employee, the employee's beneficiary(s), as expressed on the beneficiary designation form for the Town's life insurance indicated in Article 12, shall be entitled to payment of all compensation and benefits through the last day he/she performed services to or on behalf of the Town, payable on the date such salary and benefits are normally paid, with payment of all unused, accrued vacation and sick time up to applicable maximum accruals to be made within thirty days.

Article 2.3 In the event of his/her termination of employment, the Town agrees to pay the employee any additional paid time or compensation provided by the Town to other managerial employees upon termination of employment in the same manner in which such additional paid time or compensation is provided to other managerial employees upon termination of employment.

Article 2.4 Upon retirement the employee shall be reimbursed for all accrued unused sick and vacation time up to applicable maximum accruals.

Article 3. The Town agrees to reimburse the employee for tuition and books for job related academic course work at an accredited college or university for undergraduate and post-graduate degree work in the same manner in which such reimbursement is provided to other managerial employees. Reimbursement shall be provided upon successful completion of a course. No reimbursement will be provided for unsuccessful completion or failure to complete a course. Any grants or scholarships received by the employee will be credited towards the required reimbursements from the Town.

Article 4. The Town agrees to provide the time and funding for the employee and his/her management staff to attend job related seminars, conferences, and conventions subject to the approval of the Town Administrator. The Town agrees to budget and pay for, on an annual basis, subject to annual review and appropriation, such time and funding necessary for the employee to retain or receive certifications required for the performance of employment or desirable for continued professional participation and growth, for the good of the Town.

Article 5. The Town agrees to budget and pay for, on an annual basis, the professional dues and subscriptions of the employee, including International Association of Fire Chiefs (IAFC) and Florida Fire Chiefs' Association (FFCA) dues, necessary and desirable for continued professional participation and growth, for the good of the Town and subject to the Town Administrator's approval.

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Article 6. The employee shall have use of a Town vehicle for business and private use, provided said private use is restricted to use within Palm Beach County, Broward County, and Dade County. The Town Administrator may authorize private use of vehicle outside of the aforementioned counties upon written request by the employee. The Town shall be responsible for paying for liability, property damage, and comprehensive insurance and for the operation, maintenance and repair of the Town vehicle throughout the term of this agreement.

Article 7. The Town agrees to supply the employee with the electronic communication devices and services (pager, cell phone, and notebook computer) needed to perform the required tasks of the Fire Chief's job.

Article 8. The Town shall pay to the employee an initial annual base salary of NINETY-ONE THOUSAND, SIX HUNDRED AND THIRTY-SIX DOLLARS (\$91,636.00), payable in equal installments at the same intervals as the Town's management personnel are paid. This base salary will be adjusted according to the provisions of Article 9.

Article 9. The employee shall receive a five percent anniversary increase on each of the first three anniversary dates of his/her initial employment date. This increase shall be a percentage of the employee's base salary on the anniversary date. This adjustment can be increased or decreased by mutual consent. After the third anniversary date, additional increases will be considered annually thereafter. The employee shall also receive the same cost of living increase received annually by other managerial employees within the Town.

Article 10. The employee shall be enrolled in the same pension plan and shall enjoy all the same benefits of said pension plan as those provided by the Town to other managerial employees, except that the employee will 100% vest in all pension contributions on the date of the first anniversary of his/her employment with the Town. If the Town terminates employment, the Town shall pay the amount of the account balance not vested in the pension plan, grossed up to the employee's prior years effective tax rate.

Article 11. The employee shall be entitled to receive the same paid holidays and receive the same personal or bonus days received by any other managerial employee within the Town.

Article 12. The employee shall receive the same health, life, and disability insurance that other Department Directors receive.

Article 13. The employee shall receive the same number of vacation and sick leave hours and these leave hours will accrue at the same rate as those of other Department Directors. The same maximum accruals that apply to other Department Directors shall also apply to vacation and sick leave time accruals for the employee.

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Article 14. The employee shall receive the longevity payment of six percent of base salary effective on the date of initial employment with the Town. The employee will receive additional longevity payments of at least six percent of base salary on each of the first three anniversary dates of his/her employment. The employee will receive any longevity payments in excess of the six percent of base salary, which may be granted to other managerial employees during this three year period. After the third anniversary date, the employee will receive any longevity payments granted to other managerial employees. Longevity payments will be made on a biweekly basis. Longevity payment can be increased or decreased by mutual consent.

Article 15. The Town shall provide uniforms or a clothing allowance, to be utilized in performing the requirements of the Fire Chief position.

Article 16. The employee will receive the Paramedic State Certificate supplement indicated in Article 28, Section 1, Item 4, of the firefighters' collective bargaining agreement adopted May, 17, 2000. In the event that Article 28, Section 1, Item 4, of the firefighters' collective bargaining agreement adopted May, 17, 2000, is amended in a subsequent firefighters' collective bargaining agreement, the provisions of Article 16 of this agreement may be amended by mutual agreement of the Town and the employee.

Article 17. The workweek of the Fire Chief and his/her management staff shall be designed to meet the needs of the Town. The schedule shall be at the discretion of the Fire Chief. This workweek shall be a minimum of forty hours a week, and may require additional hours. The Fire Chief and his/her management staff will not receive overtime.

Article 18. In the event of a change in the benefits provided by the Town as noted by the terms "applicable maximum accruals", received by or provided to "other managerial employees" or "other Department Directors", as those terms are found in clauses throughout this agreement, the Town agrees to provide the employee with the same benefits as those provided to similarly situated employees, provided however, in no event shall such benefits be less than those received at the time of commencement of this agreement.

Article 19. Any civil action arising out of the Contract or the nonperformance or breach of any covenant contained in it shall be brought only in Broward County, Florida. The prevailing party shall be entitled to the award of its reasonable attorneys' fees and costs incurred in any such civil action, including any and all fees incurred in arbitration or appellate proceedings.

Article 20. The Town shall defend and hold harmless and indemnify the employee against all claims and actions (civil or criminal), including all attorneys' fees and costs that arise out of and in the course of the performance of his/her duties. The Town reserves the right to select, appoint, retain, or discharge legal counsel necessary to provide the defense.

Article 21. The Town or the employee's waiver of any breach of any term, condition, or covenant of this Contract shall not constitute the waiver of any other breach of the same or any other term, condition, or covenant of the Contract.

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Article 22. This Contract shall be binding on and inure to benefit of the employee's heirs and personal representatives, and the Town regardless of changes in the persons holding office as members of the Town.

Article 23. Upon execution of this contract, the Town and the employee agree to be bound by this agreement and observe all provisions thereof, and may terminate this agreement only pursuant to the provisions of Article 2 of this Agreement.

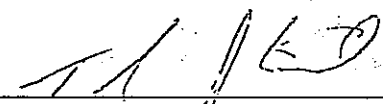
EXECUTED on the respective dates set forth below.



Donald DiPetrillo


Dated: 2-16-01

Town of Davie

By: 

Thomas Willis,
Town Administrator

Dated: 2/23/01

By: 

Harry Venis,
Mayor

Dated: 2/23/01